

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

ALBERTA LOUISE PERRY, surviving)	
spouse and next kin of VINCENT)	
MCKINNEY, deceased,)	
Plaintiff,)	
)	
v.)	No. 3:21-CV-00414-KAC-JEM
)	JURY DEMAND
JENKINS & STILES, LLC,)	
Defendant.)	

DEFENDANT’S MOTION FOR LEAVE TO FILE SUR-REPLY

Defendant Jenkins & Stiles, LLC (“Defendant”), pursuant to Local Rule 7.1, requests leave of the Court to file a Sur-Reply in opposition to Plaintiff’s Motion for Sanctions. As grounds for same, Defendant would state that Plaintiff has made arguments that Defendant should be permitted to counter, and relied on case law that Defendant should be permitted to distinguish, including but not limited to the following:

Plaintiff asserted that the statement by Defendant’s counsel on June 21, 2022, that U-Haul owned the wall panels that had been installed in the building owned by U-Haul over a year before was “utterly misleading, if not an outright misrepresentation.”¹ U-Haul owned the property where the building was located, it owned the building, it owned the walls, and so it owned the wall panels themselves. Defendant should be permitted to put forth arguments countering Plaintiff’s assertion.

Plaintiff accused the Defendant of “retain[ing] their insurance company to scrub the crime scene”² and hiring a “fixer” to come to the scene.³ Defendant should be permitted to defend itself

¹ Dkt. No. 146, Plaintiff’s Reply to Defendant’s Response to the Motion for Sanction, pp. 3-4.

² *Id.* at 5.

³ *Id.* at 7.

from these provocative accusations that indicate Plaintiff's intentions to distract and enflame the jury from the facts and merits of the case.

Plaintiff misconstrues and misstates Defendant's statements about "securing" Plaintiff's truck and trailer. Defendant's employee Curtis Kennedy specifically stated that McKinney's truck and trailer were moved "to secure it, for one thing, make sure all his stuff was in it and locked up" ⁴ Defendant's employees also discussed "securing" the area to make it safe for additional deliveries and continued work on the project. ⁵ Plaintiff twisted this statement to suit her argument that Defendant is concealing, destroying, and falsifying evidence. Defendant should be permitted to set the record straight on this.

Plaintiff relies on the Middle District of Tennessee case *Trimboli v. Maxim Crane Works, L.P.*, and argues that the facts in *Trimboli* are similar to those at issue in this case. *Trimboli* is distinguishable on the facts, particularly in that Defendant has never disputed that they moved the materials at issue mere yards from the place where they fell, but only after the scene was released by first responders, and only to. ⁶ Defendant should be permitted to distinguish *Trimboli*, which Plaintiff places such significant reliance on.

Therefore, Defendant requests that the Court enter an Order granting this Motion and permitting Defendant to submit a Sur-Reply of no more than five pages (per Local Rule 7.1), to call to attention these and other discrepancies and misstatements in Plaintiff's Reply, and to distinguish case law relied on by Plaintiff.

⁴ Dkt. No. 144, Defendant's Response to Plaintiff's Motion for Sanctions, p. 6 (quoting Dkt. No. 144-1, Kennedy Dep. 166:13-14).

⁵ Dkt. No. 144-1, Kennedy Dep. 166:9-14; Dkt. No. 144-4, Sullins Dep. 50:17-51:23, 66:20-25, 67:14-18.

⁶ *Id.*

Respectfully submitted this 29th day of June, 2023.

COPELAND, STAIR, VALZ & LOVELL, LLP

/s/ G. Graham Thompson

ANGELA CIRINA KOPET, BPR 017921

G. GRAHAM THOMPSON, BPR 034467

735 Broad Street, Suite 1100

Chattanooga, TN 37402

Phone: 423-713-7075

CERTIFICATE OF SERVICE

This is to certify the foregoing pleading was filed electronically and that the notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

This 29th day of June, 2023.

COPELAND, STAIR, VALZ & LOVELL, LLP

By: /s/ G. Graham Thompson

735 Broad Street, Suite 1100
Chattanooga, TN 37402